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The Settlement of Ulayat Land Disputes by Returning Land to Each of the Senamanenek Indigenous Peoples, Kampar Regency

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***Abstract*—The dispute over the ulayat lands of senamanenek has entered a new phase after a very long struggle. For approximately 25 years, there has been a dispute between the senamanenek indigenous peoples confront PT. Perkebunan Nusantara V on a disputed land area of approximately 2.571 ha. Various efforts have been made by the senamanenek indigenous peoples to regain their constitutional rights as indigenous peoples over their ulayat lands. The problem attracted the attention of the President in particular in its resolution as a policy maker. The writing method used by the author is descriptive analysis with a qualitative research pattern. The conclusion that the author found is that it does not take long for a President who is equipped with state organs to verify the truth of the status of customary rights of indigenous peoples. It is proven that only with no more than 6 months the decision to hand over to indigenous peoples is carried out. The handover of the ulayat lands of the Senamanenek indigenous peoples is an implementation of the constitutional rights of indigenous peoples guaranteed by state law.**

Keywords—returning land, kampar, Senamanenek Indigenous

I. INTRODUCTION

Legal logic is not the same as physical logic. Legal logic will be influenced by humans as lawmakers and or law enforcers. The choices of legal decisions or legal actions taken by the community often come out of written legal provisions or also existing habits. The will of the community that guides the law to accommodate social values, such as information disclosure, honesty, access to legal justice [1] is required to harmonize itself with the demands of the community [2].

Settlement of land disputes between the indigenous people of Senamanenek (MSA) and PT. Perkebunan Nusantara V (hereinafter referred to as PTPN V) is a concrete form of the operation of the law in accordance with the needs and desires of the community. The customary land dispute between the Sinamonenek indigenous people and PTPN V has been going on since the 1990s [3]. The disputed customary land of Sinama Granny covers an area of 2,800 hectares consisting of the ulayat lands of the top tribe/inner and nephews of the Domo, Potopang, Piliang, Malay and Mandailing tribes [4].

Various efforts made by MAS to regain their rights (ulayat land), such as mediation with the paradigm of interest-based negotiation [5], have also failed. Reporting or complaining to the central government, local government and KOMNAS HAM, also did not get any results [3]. Including the assistance of KOMNAS HAM through letter number: 034/R/Mediasi/VI/2012 KOMNASHAM asks the President of the Republic of Indonesia to take concrete steps in the context of restoring MAS's customary land rights.

It turns out that dispute resolution is largely determined by the ability of the parties to read the timeliness and political needs of decision makers. The settlement of disputes that occurred between MAS and PTPTN V academically is an intelligence or foresight of indigenous peoples in reading political situations. The impasse in finding a place to complain and the tiredness of fighting that had been for many years turned out for indigenous peoples to give birth to a sense of thought that could read the opportunities for resolution during the contestation period of the presidential election.

The moment of the 2019 Presidential General Election for MAS to be able to communicate directly with the President, and coincidentally President Joko Widodo at that time was one of the contestants. The direct meeting with the president turned out to be something very effective in resolving the dispute between MAS and PTPN V, and in the end the 2800 hectares of land were handed over to the indigenous peoples and divided among each individual community. Departing from the description above, to find out more, the author needs to discuss and examine the "Settlement of Communal Land Disputes by Returning Land to Each of the Indigenous Peoples of Senamanenek, Kampar Regency".

II. FORMULATION OF THE PROBLEM

Based on the above background, the writer determines the formulation of the problem as follows: What are the options for

resolving land disputes between the indigenous peoples of Senananek and PTPN V so that they are divided individually?

III. THE RESEARCH PURPOSE

The aims of the research are, to analyze and find out the options for resolving land disputes between the indigenous peoples of Senananek and PTPN V.

IV. DISCUSSION

A. Settlement is Neither Litigation Nor Mediation

1) Not using litigation: The main principle of proof in civil procedural law is formal evidence or evidence of letters of rights or objects of rights disputed by the parties in court. The disputing parties must be able to prove that the object in dispute is their right and not the right of another party. As in article 1865 of the Civil Code or article 163 HIR that: "Anyone who says that he has rights to goods or mentions an event to confirm his rights, or to refute the rights of others, then that person must prove the existence of that right or that incident.

A person will have a strong chance to win in a civil dispute if he can prove written evidence of a material right, because written evidence has the main position in the evidence, as explained by M. Yahya Harahap, that in Article 1866 of the Civil Code, the first order of evidence is called evidence. Writing (schrifftelijke bewijs, written evidence) [6]. Proof is convincing the judge of the truth or the arguments put forward in a dispute [7].

The strength of the evidence will determine the success of the parties in carrying out a lawsuit in a civil court. According to Achmad Ali and Wiwie Heryani, there are five types of evidence power or evidence power from evidence, namely; (1) The power of proof is perfect, complete (volledig bewijskracht); (2) Weak, incomplete evidence (onvolledig bewijskracht); (3) The power of partial proof (gedeeltelijk bewijskracht); (4) The decisive strength of evidence (beslissende bewijskracht); and (5) The strength of proof of resistance (tegenbewijs or kracht van tegen bewijs) [8].

The parties do not choose litigation or courts in resolving ordinary disputes due to the criteria of evidence required by civil procedural law. Written evidence is often a problem for someone to file a lawsuit in court. The dispute between MAS and PTPN V was not resolved through litigation, due to the difficulty of fulfilling the argument for customary land rights as required by the law of evidence in civil disputes. In addition, it is difficult for the parties to be sure that they will win as Yahya Harahap said, entering the court arena like people wandering trying their luck in the wilderness, it is not clear which is north and south [9].

MAS does not have written evidence (certificates) issued by the government as the owner of rights to customary land covering an area of 2800. MSA recognizes and struggles to obtain customary land rights not from the positive legal paradigm, which requires that land rights must be proven in writing, but departs from customary law or local wisdom. State law recognizes, respects and rights of indigenous peoples [10], but on the other hand they are charged with difficult conditions in realizing their rights [11].

While PTPN V is factually the party that controls the disputed land. Legally PTPN V is not really strategic if it chooses to settle a civil dispute through the courts, it will take time, because the settlement through civil court takes quite a long time, the costs incurred will certainly be large.

On the other hand, the Company considers that the development of the oil palm area has complied with the procedures and policies based on several principle permits, namely: 1. Decree of the Minister of Agriculture Number 178/KPTS/UM/III/1979 concerning the Development Area of P.N/P.T Plantation; 2. Decree of the Governor of Riau No. Ktps.131/V/1983 of 1983 concerning Land Reserves for Oil Palm and Rubber Plantations covering an area of more than 30,000 Ha in Tandun and Siak Hulu Subdistricts, Kampar Regency which is managed by PT. Plantation II Tanjung Morawa. Decree of the Minister of Forestry No. 403/KPTS-II/1996 concerning the release of 32,235 hectares of forest in the Sei Lindai Forest group, Kampar Regency [12].

2) The blunt of mediation: Dispute resolution through mediation [13], should be used as a means of resolving disputes in civil law areas, because it can override litigation in the District Court [14]. Mediation does not require a long time and the cost is quite light, the choice is a win-win solution, the relationship between the parties is well maintained [15]. Mediation is very appropriate to use, especially in resolving land disputes, because land disputes in Indonesia are very high in quantity, and of course they can hinder development, and even contribute to creating various social conflicts.

The Agrarian Reform Consortium also noted that this agrarian conflict occurred in several sectors, starting from the plantation, property, infrastructure, agriculture, forestry, coastal/marine and mining sectors [16]. Differences in perspective (paradigm), interests or other arrangements are the basic points for the emergence of conflict. According to De Dreu and Gelfand, conflict is a process that begins when individuals or groups perceive differences or oppositions between themselves and other individuals or groups regarding interests and resources, beliefs, values, or other practices [16]. The conflict occurred because there was a clash of paradigms (values, viewpoints) between indigenous peoples and PTPN V, related to rights and management of agrarian resources.

In line with De Dreu and Gelfand mediation is not the choice of both parties, the differences between MAS and PTPN V come from different perspectives and interests. For MAS, customary land is seen in the context of customary law as a right that is used for economic, social and even spiritual interests [17]. Meanwhile PTPN V departs from the concept of modern law and is for the benefit of the economy and national

development. From the perspective of Tri Chandra Aprinato, the MSA and PTPN V dispute can be seen that the conflict is not only related to the plantation economy, but also the struggle and struggle for the management of agrarian resources, which also involves agrarian political policies and the underlying ideology [18]. The struggle for the right to manage to obtain benefits or even from 2800 hectares of land is very much a description of the dispute between MAS and PTPN V.

Mediation is actually one of the dispute resolutions that has existed since time immemorial and persists to this day. It is not wrong if mediation is qualified as a model and tradition in the life of the village community. Usually the customary head (ninik mamak), Village head, traditional leaders act as mediators in resolving disputes in the community [9]. Regulation of the Supreme Court Number 1 of 2008 concerning Mediation Procedures at the Supreme Court of the Republic of Indonesia, integrates mediation in the judicial process. The purpose of mediation integration in civil procedural law is none other than so that the parties prioritize consensus and deliberation in resolving disputes, and of course not spending a long time, and saving costs.

Several parties tried to mediate between MAS and PTPN V, but the peace process was unsuccessful. The Riau Malay Customary Institution (LAMR) [19], as a community organization that plays a significant role in resolving the rights of indigenous peoples, has made several attempts, such as a meeting of the parties, but LAMR's efforts have not succeeded in reconciling the two parties. The recognition of rights from the state to Sinamanenek's ulayat land, and PTPN V as a State-Owned Enterprise (BUMN) has invested and has very large assets on the disputed land, becoming a major problem and at the same time an obstacle to dispute resolution.

The District Government has approached and communicated with the parties, but still to no avail. Likewise, the Provincial Government has made peace efforts, in 2007 it was agreed between the team formed by the Governor of Riau and related parties that the land be handed over to the community, but in fact PTPN V still controls and manages the land [12].

The mediation process apart from the government was also carried out by the Provincial House of Representatives and members of the Regional Representative Council of the Republic of Indonesia (DPD RI) representing Riau, the parties were invited to discuss and consult to resolve the dispute, but it did not provide a successful peace. The House of Representatives of the Republic of Indonesia (DPR RI), through Commission VI of the DPR recommends to the State Ministry of State-Owned Enterprises to resolve the land dispute in Senamanenek covering an area of 2,800 hectares, and gives a settlement time of no later than the end of August 2009, as revealed by Deputy Chairman of Commission VI DPR Anwar Sanusi (F-PP) at the Commission VI Working Meeting with the State Minister for State-Owned Enterprises Sofyan Djalil at the Nusantara I Building, DPR [20].

B. Presidential Election and Presidential Policy

The expression "no problem can't be solved", this community Pameo is not just a string of words, but actually contains a life value and spirit for everyone who is facing problems in this life. The main principles in solving problems are persistence, sincerity, patience, and interacting with others. These attitudes will undoubtedly deliver or give someone a way out of the problems he faces.

MAS's tireless, persistent and earnest struggle turned out to be fruitful after decades of their ulayat land rights which had been controlled by PTPN V. Observant in reading the opportunities, and wisely looking for friends to negotiate, it turned out that MAS had one intelligence and led the way for them. to meet directly with President Joko Widodo. The community used the period of the Presidential General Election (PILPRES) for guerrillas to find space to fight and meet with the President. From the MAS perspective, PIPLRES is a golden opportunity to be successful in fighting for customary land rights.

The PILPRES period with the wide spread of political networks (or success teams) became a smooth path for MAS to be able to meet with the President. In 2019, MAS when the President was carrying out his duties in Dumai City, was used by MAS to be able to directly meet the President. It turned out that Dewi Fortuna sided with MAS, they were accepted by the President and they had the opportunity to convey about the existence of their ulayat land which was controlled by PTPN V.

The President immediately responded to MAS's complaints and requests, by ordering the Minister of State-Owned Enterprises to immediately resolve the issue of MAS' ulayat land with PTPN V as soon as possible. President Jokowi in a Limited Meeting (Ratas) for the Acceleration of Settlement of Land Issues at the State Palace, Jakarta, Friday (3 May 2019) stated that he would hand over 2800 hectares of land to MAS [21]. Through the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency on June 10, 2019 handed over 1,385 Land Certificates of property rights on an area of 2,571.01 Ha to the people of Senama Nenek Village [22].

The success of MAS in being able to meet directly with President Joko Widodo can theoretically be seen that the law is highly dependent on political will. The Law as a product of political power resulting from the process of negotiation and contestation of interests that work through the process of law formation [23], the president with powers as Head of State and Head of Government can easily hand over MAS's ulayat land, which has been disputed for almost 30 years. The process of producing the President'spoice (good will) politically and legally cannot be separated from the negotiation process, and the contestation of interests, because at that time the Presidential General Election (PILPRES) campaign was being carried out.

The transfer of rights to MAS proves that law cannot be separated from political aspects, even ideological, social, economic and so on [23]. In line with John Austin's thoughts, law is nothing but a product of politics or power [24]. Daniel S.

Lev said that the law is more or less always a political tool [24]. The political situation and pragmatic interests of the PILPRES, are in line with S. Lev's view of the birth of presidential policy in resolving disputes between MAS and PTPN V and handing over customary land to MAS.

V. CONCLUSION

From the description above, the authors conclude as follows, that dispute resolution between MAS and PTPN V is not carried out by a process of direct interaction between the two parties, either through court (litigation) or mediation (non-litigation), but is carried out at the discretion of the President who orders the Ministry of Business Entities State property to hand over 2800 hectares of customary land to MAS, and through the National Land Agency (BPN) a certificate is issued in the name of each individual MAS.

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